IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8365 of 1993

For Approval and Signature:

HONOURABLE MR.JUSTICE K.A.PUJ

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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KARSANBHAI C SOLANKI - Petitioner
Versus
SURENDRANAGAR DISTRICT PANCHAYAT & 1 - Respondents

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Appearance :
MR NK MAJMUDAR for Petitioner.
MR DD VYAS for Respondents.

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CORAM : HONOURABLE MR.JUSTICE K.A.PUJ

Date : 01/02/2006

ORAL JUDGMENT

1.The petitioner has filed this petition under Article 226 of the Constitution of India seeking direction to the respondents to give permanent appointment to the petitioner on the post of Sweeper.

2.The petition was admitted on 20.08.1993 and the Court has granted ad-interim relief to the effect that the petitioner's service should not be terminated and the Court has further directed by way of ad-interim relief that the respondents may consider the case of the petitioner in light of the Circular dated 26.12.1980 and take appropriate decision in the matter within 8 weeks from the date of the said order.

3.Pursuant to the said order, the respondent has taken the decision and it was communicated to the learned advocate Mr. D.D. Vyas vide letter

dated 21.11.1998 that Resolution dated 26.12.1980 was stayed by the State Government vide another Resolution dated 21.08.1995 and there was 10% cut in further recruitment or appointment. In this view of the matter, the petitioner cannot be absorbed to a permanent post.

4.It is the case of the petitioner that the petitioner was serving as a part-time Sweeper in District Health Office, Surendranagar District Panchayat, Surendranagar since 1981. The petitioner was given work of part time peon since January 1982. The petitioner thereafter made representation on 01.03.1990 requesting the respondent authorities to make the petitioner permanent as a peon in the respondent no. 2 establishment. However, on 20th March 1990, the petitioner was informed by respondent No. 2 that at present no appointment as a permanent sweeper could be given. Again

in September 1991, the petitioner was informed by the respondent No. 2 that he has no power to make permanent appointment.

5.The petitioner has also filed further affidavit on 18.03.2004. It is stated therein that despite the Govt. Resolution dated 28.02.1983 resolving that Sweeper who has completed ten years of service should be absorbed on the post of peon as Class IV employee as and when post of Peon falls vacant if such employee fulfills the prescribed qualification as per recruitment rules. It was also resolved that while absorbing on the post of Peon, employee should be given relaxation in age limit. Other similarly situated persons to the petitioner have been given the benefit of the said resolution. However, only the petitioner was singled out by the authorities. Similarly situated persons had filed Special Civil Application No. 1209 of 2004 before this Court

and prayed that they may be given benefit as per Govt. Resolution dated 15.10.1982. This Court has passed an order directing the authorities to absorb those petitioners of the said petition to the post of Peon irrespective of their age. It is, therefore, prayed that the respondents may be directed to consider the case of the petitioner for absorption to the post of peon in view of Govt. Resolution dated 15.10.1982.

6.Mr. Deep Vyas, learned advocate appearing for Mr. D.D. Vyas for the respondent has submitted that the prayer made in the petition is with regard to making the petitioner permanent to the post of Sweeper. There is no permanent post of Sweeper and it is a part time post. The representation made by the petitioner was that as and when the peon went on leave, the petitioner performed the duty as a peon. However, such appointment of the petitioner in

case of leave vacancy cannot be made permanent. There is no vacant post in the establishment of the respondent on which the petitioner can be made permanent. He has relied on the full bench judgment of this Court and submitted that the Court cannot issue direction to create any new post for the petitioner so as to absorb him. He has, therefore, submitted that the petition be dismissed.

7.After having heard learned advocates appearing for the respective parties and after having considered the submissions and the resolutions placed on record, the Court is of the view that since there is no vacant post, the Court cannot issue direction to make the petitioner permanent. However, since the petitioner is performing his duty for the last more than 21 years as a part time Sweeper, the petitioner's services cannot be terminated and hence, this Court directs the respondent authorities to

consider the case of the petitioner in light of the Resolutions which are produced on record and in light of the directions issued by this Court in respect of similarly situated persons and take appropriate decision in the matter within a period of three months from the date of receipt of writ from this Court or from the date of receipt of certified copy of this order, whichever is earlier.

8.Subject to the aforesaid direction, this petition is accordingly disposed of. Rule is made absolute to the above extent without any order as to costs.

[K.A. PUJ, J.]

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